

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F609906

CHRIS SCOGGINS, EMPLOYEE	CLAIMANT
GLENN ROBERTS EXCAVATION, INC., EMPLOYER	RESPONDENT NO. 1
FIRSTCOMP INSURANCE CO., CARRIER	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED JUNE 8, 2009

Upon review before the FULL COMMISSION, Little Rock, Pulaski County, Arkansas.

Claimant represented by HONORABLE MARK A. PEOPLES, Attorney at Law, Little Rock, Arkansas.

Respondent represented by HONORABLE WILLIAM C. FRYE, Attorney at Law, North Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

The claimant appeals from a decision of the Administrative Law Judge filed February 6, 2009.

The Administrative Law Judge entered the following findings of fact and conclusions of law:

1. There was a September 1, 2006, incident, which caused a fatality of the claimant.
2. A lawsuit was filed in Circuit Court on March 14, 2007, by the administrator of Mr. Scoggins' estate.

3. In October 2007, a Motion to Dismiss was filed in Circuit Court, stating that a determination of whether or not the Arkansas Workers' Compensation Commission had jurisdiction of this matter had to be made.

4. On November 2, 2007, an order dismissing the case was filed.

5. I find the Arkansas Workers' Compensation Commission has jurisdiction of this matter and find that the claimant was an employee of the respondent employer and not an independent contractor.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

A. WATSON BELL, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

DISSENTING OPINION

I must respectfully dissent from the majority opinion. All of the evidence, specifically, the testimony of the respondent, clearly shows that the claimant was not an employee of the respondent. There was no contract of hire. It does not matter what the respondent would have paid the claimant or what duties the claimant would have performed if he was an employee, because he wasn't an employee. He also wasn't an independent contractor, again, because there was no contract. The majority has clearly erred and should be reversed.

PHILIP A. HOOD, Commissioner